



January 8, 2001

Mr. James Raup
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR2001-0065

Dear Mr. Raup:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142995.

The Round Rock Independent School District (the "district"), which you represent, received a request for information relating to assessments of a specified student. The district believes that release of the assessment materials might implicate the interests of the third parties that published them. Pursuant to section 552.305 of the Government Code, the district notified those parties, Hawthorne Educational Services, Inc. ("Hawthorne"), and Devereaux Foundation, of the request for information and of the third parties' right to submit arguments to this office as to why the requested information should be withheld from disclosure. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). The district also submitted the information in question to this office. Hawthorne submitted comments to this office. We have considered your comments and those submitted by Hawthorne and have carefully reviewed the information you submitted.

In asking for this attorney general decision, the district does not claim that any of the submitted information is excepted from public disclosure. Rather, you point out that the information in question is protected by copyright law. You inform us that the requestor is a parent of the child to whom the assessments were administered and that the district has allowed the parent to review the test questions and answer sheets for her child, but has declined to provide copies of those documents. You state that "[b]ecause of the copyright laws, the district does not intend to duplicate the materials." You advise us that it is the district's policy not to release original documents and not to allow parents to use the

district's copiers. You inquire whether the district must allow the requestor to make copies of the requested materials using the district's copiers. Similarly, Hawthorne does not claim that its copyrighted materials are excepted from disclosure. However, Hawthorne does oppose any unauthorized duplication of its copyrighted materials.

Initially, we address the assessment materials that were administered to the named student. Although the forms of most of those materials are copyrighted, the submitted materials also contain information pertaining specifically to the named student. To the extent that the submitted testing materials contain such information, we believe that access to those materials is governed by sections 552.026 and 552.114 of the Government Code and the federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. FERPA defines "education records" as those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). Section 552.114 of the Government Code excepts from disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office generally has treated "student record" information under section 552.114 as the equivalent of "education record" information that is subject to FERPA. *See* Open Records Decision No. 634 at 5 (1995).

FERPA gives a parent the right to inspect and review the education records of his or her child. *See* 20 U.S.C. § 1232g(a)(1)(A). FERPA also requires an educational agency or institution to respond to reasonable requests for explanations and interpretations of education records. *See* 34 C.F.R. § 99.10(c). On the other hand, FERPA does not entitle a parent to copy an education record to which the parent has a right of access, unless "circumstances effectively prevent the parent . . . from exercising the right to inspect and review the student's education records[.]" *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.10(d). Section 552.114 of the Government Code also provides a special parental right of access to student records. *See* Gov't Code § 552.114(b)(2). In the event of a conflict between FERPA and chapter 552 of the Government Code, the federal law prevails. *See* Gov't Code § 552.026; Open Records Decision No. 634 (1995). In this instance, you indicate that the district has permitted the requestor to inspect and review her child's education records. Under FERPA, the district also must comply with a reasonable request for explanations and interpretations of those records. The district is not required, however, under FERPA, to permit the requestor to make copies of education records pertaining to her child.

We next address the copyrighted contents of the administered assessment materials and the copyrighted test manuals. The district raises no claim that any of the copyrighted information is excepted from public disclosure. To the extent that the copyrighted materials contain no information pertaining to the requestor's child, they present no issues under either FERPA or section 552.114 of the Government Code. The district must make the copyrighted information available to the requestor in accordance with the Public Information Act. *See* Gov't Code §§ 552.021, .221. In doing so, however, the district also must comply with the copyright law. The district is not required to furnish copies of any information that is copyrighted. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception to disclosure under the Act applies to that information. *Id.* However, if a member of the public wishes to make copies of copyrighted materials, he or she must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

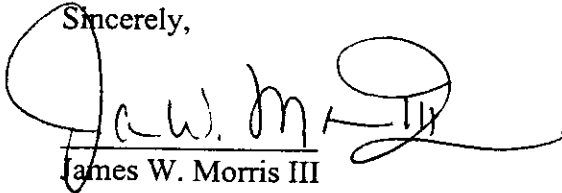
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, stylized initial "J" and a long, sweeping underline.

James W. Morris III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 142995

Encl. Submitted documents

cc: Ms. Melissa Mitchell
10616 Mellow Meadows #40A
Austin, Texas 78750
(w/o enclosures)